
HOUSE BILL No. 1069

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-13-2-14.7; IC 5-2-12-4; IC 12-24-3-2; IC 20-6.1-4; IC 22-5-5-1; IC 31-19-9-10; IC 33-14-1-8; IC 33-19-6; IC 34-24-1-1; IC 35-42-1-1; IC 35-47-4-5; IC 35-50.

Synopsis: Sexual misconduct with a minor. Adds references to the crime of sexual misconduct with a minor to various statutes concerning sex crimes. Amends references to the crime of sexual misconduct with a minor in various statutes concerning sex crimes to include the crime regardless of the level of felony committed.

Effective: July 1, 2003.

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January 7, 2003, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1069

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-13-2-14.7, AS AMENDED BY P.L.228-2001,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 14.7. A person employed, appointed, or under
4 contract with a state agency, who works with or around children, shall
5 be dismissed (after the appropriate pre-deprivation procedure has
6 occurred) if that person is, or has ever been, convicted of any of the
7 following:

- 8 (1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)
- 9 years of age.
- 10 (2) Criminal deviate conduct (IC 35-42-4-2), if the victim is less
- 11 than eighteen (18) years of age.
- 12 (3) Child molesting (IC 35-42-4-3).
- 13 (4) Child exploitation (IC 35-42-4-4(b)).
- 14 (5) Vicarious sexual gratification (IC 35-42-4-5).
- 15 (6) Child solicitation (IC 35-42-4-6).
- 16 (7) Child seduction (IC 35-42-4-7).
- 17 (8) Sexual misconduct with a minor as a Class A or Class B



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felony (IC 35-42-4-9).

(9) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

SECTION 2. IC 5-2-12-4, AS AMENDED BY P.L.116-2002, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) As used in this chapter, "offender" means a person convicted of any of the following sex and violent offenses:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Child exploitation (IC 35-42-4-4(b)).

(5) Vicarious sexual gratification (IC 35-42-4-5).

(6) Child solicitation (IC 35-42-4-6).

(7) Child seduction (IC 35-42-4-7).

(8) Sexual misconduct with a minor as a ~~Class A, Class B, or Class C~~ felony (IC 35-42-4-9).

(9) Incest (IC 35-46-1-3).

(10) Sexual battery (IC 35-42-4-8).

(11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.

(12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(13) An attempt or conspiracy to commit a crime listed in subdivisions (1) through (12).

(14) A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (13).

(b) The term includes a child who has committed a delinquent act and who:

(1) is at least fourteen (14) years of age;

(2) is on probation, is on parole, or is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and

(3) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

SECTION 3. IC 12-24-3-2, AS AMENDED BY P.L.228-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. To provide greater security for patients,

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visitors, and employees, the division may not employ in a state institution an individual who has been convicted of any of the following offenses:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4).
- (5) Sexual misconduct with a minor ~~as a Class A or Class B felony~~ (IC 35-42-4-9).

SECTION 4. IC 20-6.1-4-10, AS AMENDED BY P.L.228-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) An indefinite contract with a permanent teacher may be canceled in the manner specified in section 11 of this chapter for only the following grounds:

- (1) immorality;
- (2) insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation;
- (3) neglect of duty;
- (4) incompetency;
- (5) justifiable decrease in the number of teaching positions;
- (6) a conviction for:
 - (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age;
 - (B) criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age;
 - (C) child molesting (IC 35-42-4-3);
 - (D) child exploitation (IC 35-42-4-4(b));
 - (E) vicarious sexual gratification (IC 35-42-4-5);
 - (F) child solicitation (IC 35-42-4-6);
 - (G) child seduction (IC 35-42-4-7);
 - (H) sexual misconduct with a minor ~~as a Class A or Class B felony~~ (IC 35-42-4-9); or
 - (I) incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age; or
- (7) other good and just cause.

When the cause of cancellation is ground (1), (2), or (6), the cancellation is effective immediately. When the cause of cancellation is ground (3), (4), (5), or (7), the cancellation is effective at the end of the school term following the cancellation.

(b) An indefinite contract may not be canceled for political or personal reasons.



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SECTION 5. IC 20-6.1-4-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10.5. (a) An indefinite contract with a semipermanent teacher may be canceled in the manner specified in section 11 of this chapter only for the following grounds:

- (1) Immorality.
- (2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.
- (3) Neglect of duty.
- (4) Substantial inability to perform teaching duties.
- (5) Justifiable decrease in the number of teaching positions.
- (6) Good and just cause.
- (7) The cancellation is in the best interest of the school corporation.
- (8) A conviction for:
 - (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age;
 - (B) criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age;
 - (C) child molesting (IC 35-42-4-3);
 - (D) child exploitation (IC 35-42-4-4(b));
 - (E) vicarious sexual gratification (IC 35-42-4-5);
 - (F) child solicitation (IC 35-42-4-6);
 - (G) child seduction (IC 35-42-4-7);
 - (H) **sexual misconduct with a minor (IC 35-42-4-9)**; or
 - (I) incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

(b) An indefinite contract with a semipermanent teacher may not be canceled for political or personal reasons.

(c) Before the cancellation of a semipermanent teacher's indefinite contract, the principal of the school at which the teacher teaches shall provide the teacher with a written evaluation of the teacher's performance before January 1 of each year. Upon the request of a semipermanent teacher, delivered in writing to the principal within thirty (30) days after the teacher receives the evaluation required by this section, the principal shall provide the teacher with an additional written evaluation.

SECTION 6. IC 22-5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. The employment contract of a person who:

- (1) works with children; and
- (2) is convicted of:

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- 1 (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18)
- 2 years of age;
- 3 (B) criminal deviate conduct (IC 35-42-4-2), if the victim is
- 4 less than eighteen (18) years of age;
- 5 (C) child molesting (IC 35-42-4-3);
- 6 (D) child exploitation (IC 35-42-4-4(b));
- 7 (E) vicarious sexual gratification (IC 35-42-4-5);
- 8 (F) child solicitation (IC 35-42-4-6);
- 9 (G) child seduction (IC 35-42-4-7);
- 10 (H) **sexual misconduct with a minor (IC 35-42-4-9);** or
- 11 (I) incest (IC 35-46-1-3), if the victim is less than eighteen
- 12 (18) years of age;

13 may be canceled by the person's employer.

14 SECTION 7. IC 31-19-9-10, AS AMENDED BY P.L.222-2001,
 15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2003]: Sec. 10. A court shall determine that consent to
 17 adoption is not required from a parent if:

- 18 (1) the parent is convicted of and incarcerated at the time of the
- 19 filing of a petition for adoption for:
 - 20 (A) murder (IC 35-42-1-1);
 - 21 (B) causing suicide (IC 35-42-1-2);
 - 22 (C) voluntary manslaughter (IC 35-42-1-3);
 - 23 (D) rape (IC 35-42-4-1);
 - 24 (E) criminal deviate conduct (IC 35-42-4-2);
 - 25 (F) child molesting as a Class A or Class B felony
 - 26 (IC 35-42-4-3);
 - 27 (G) **sexual misconduct with a minor (IC 35-42-4-9);**
 - 28 (H) incest as a Class B felony (IC 35-46-1-3);
 - 29 ~~(H)~~ (I) neglect of a dependent as a Class B felony
 - 30 (IC 35-46-1-4);
 - 31 ~~(H)~~ (J) battery of a child as a Class C felony
 - 32 (IC 35-42-2-1(a)(3));
 - 33 ~~(H)~~ (K) battery as a Class A felony (IC 35-42-2-1(a)(5)) or
 - 34 Class B felony (IC 35-42-2-1(a)(4)); or
 - 35 ~~(K)~~ (L) an attempt under IC 35-41-5-1 to commit an offense
 - 36 described in clauses (A) through ~~(J)~~; (K);
 - 37 (2) the child or the child's sibling, half-blood sibling, or
 - 38 step-sibling of the parent's current marriage is the victim of the
 - 39 offense; and
 - 40 (3) after notice to the parent and a hearing, the court determines
 - 41 that dispensing with the parent's consent to adoption is in the
 - 42 child's best interests.



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SECTION 8. IC 33-14-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. A prosecuting attorney who charges a person with committing any of the following shall inform the person's employer of the charge, unless the prosecuting attorney determines that the person charged does not work with children:

- (1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
- (2) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) **Sexual misconduct with a minor (IC 35-42-4-9).**
- (9) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

SECTION 9. IC 33-19-6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. In each criminal action in which:

- (1) a person is found to have committed the offense of:
 - (A) murder (IC 35-42-1-1);
 - (B) causing suicide (IC 35-42-1-2);
 - (C) voluntary manslaughter (IC 35-42-1-3);
 - (D) reckless homicide (IC 35-42-1-5);
 - (E) battery (IC 35-42-2-1);
 - (F) rape (IC 35-42-4-1);
 - (G) criminal deviate conduct (IC 35-42-4-2);
 - (H) child molesting (IC 35-42-4-3);
 - (I) child exploitation (IC 35-42-4-4);
 - (J) vicarious sexual gratification (IC 35-42-4-5);
 - (K) child solicitation (IC 35-42-4-6);
 - (L) incest (IC 35-46-1-3);
 - (M) neglect of a dependent (IC 35-46-1-4);
 - (N) child selling (IC 35-46-1-4); ~~or~~
 - (O) child seduction (IC 35-42-4-7); **or**
 - (P) **sexual misconduct with a minor (IC 35-42-4-9);** and
- (2) the victim of the offense is less than eighteen (18) years of age;

the court shall order the person to pay a child abuse prevention fee of one hundred dollars (\$100) to the clerk.



SECTION 10. IC 33-19-6-21, AS ADDED BY P.L.280-2001,
SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2003]: Sec. 21. (a) This section applies to criminal actions.

(b) The court shall assess a sexual assault victims assistance fee of
at least two hundred fifty dollars (\$250) and not more than one
thousand dollars (\$1,000) against an individual convicted in Indiana of
any of the following offenses after June 30, 2001:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual battery (IC 35-42-4-8).
- (9) Sexual misconduct with a minor as a ~~Class A or Class B~~
~~felony~~ (IC 35-42-4-9).
- (10) Incest (IC 35-46-1-3).

SECTION 11. IC 34-24-1-1, AS AMENDED BY P.L.123-2002,
SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2003]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are
intended for use by the person or persons in possession of them to
transport or in any manner to facilitate the transportation of the
following:

(A) A controlled substance for the purpose of committing,
attempting to commit, or conspiring to commit any of the
following:

- (i) Dealing in or manufacturing cocaine, a narcotic drug, or
methamphetamine (IC 35-48-4-1).
- (ii) Dealing in a schedule I, II, or III controlled substance
(IC 35-48-4-2).
- (iii) Dealing in a schedule IV controlled substance
(IC 35-48-4-3).
- (iv) Dealing in a schedule V controlled substance
(IC 35-48-4-4).
- (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- (vi) Possession of cocaine, a narcotic drug, or
methamphetamine (IC 35-48-4-6).
- (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- (viii) Dealing in marijuana, hash oil, or hashish
(IC 35-48-4-10).



- 1 (B) Any stolen (IC 35-43-4-2) or converted property
 2 (IC 35-43-4-3) if the retail or repurchase value of that property
 3 is one hundred dollars (\$100) or more.
 4 (C) Any hazardous waste in violation of IC 13-30-6-6.
 5 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
 6 destruction (as defined in IC 35-41-1-29.4) used to commit,
 7 used in an attempt to commit, or used in a conspiracy to
 8 commit an offense under IC 35-47 as part of or in furtherance
 9 of an act of terrorism (as defined by IC 35-41-1-26.5).
 10 (2) All money, negotiable instruments, securities, weapons,
 11 communications devices, or any property used to commit, used in
 12 an attempt to commit, or used in a conspiracy to commit an
 13 offense under IC 35-47 as part of or in furtherance of an act of
 14 terrorism or commonly used as consideration for a violation of
 15 IC 35-48-4 (other than items subject to forfeiture under
 16 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
 17 (A) furnished or intended to be furnished by any person in
 18 exchange for an act that is in violation of a criminal statute;
 19 (B) used to facilitate any violation of a criminal statute; or
 20 (C) traceable as proceeds of the violation of a criminal statute.
 21 (3) Any portion of real or personal property purchased with
 22 money that is traceable as a proceed of a violation of a criminal
 23 statute.
 24 (4) A vehicle that is used by a person to:
 25 (A) commit, attempt to commit, or conspire to commit;
 26 (B) facilitate the commission of; or
 27 (C) escape from the commission of;
 28 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 29 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 30 (IC 35-42-4-3), ~~or~~ child exploitation (IC 35-42-4-4), **sexual**
 31 **misconduct with a minor (IC 35-42-4-9)**, or an offense under
 32 IC 35-47 as part of or in furtherance of an act of terrorism.
 33 (5) Real property owned by a person who uses it to commit any of
 34 the following as a Class A felony, a Class B felony, or a Class C
 35 felony:
 36 (A) Dealing in or manufacturing cocaine, a narcotic drug, or
 37 methamphetamine (IC 35-48-4-1).
 38 (B) Dealing in a schedule I, II, or III controlled substance
 39 (IC 35-48-4-2).
 40 (C) Dealing in a schedule IV controlled substance
 41 (IC 35-48-4-3).
 42 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

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(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or

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methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 12. IC 35-42-1-1, AS AMENDED BY P.L.17-2001, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. A person who:

- (1) knowingly or intentionally kills another human being;
- (2) kills another human being while committing or attempting to commit arson, burglary, child molesting, **sexual misconduct with a minor**, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, or carjacking;
- (3) kills another human being while committing or attempting to commit:

(A) dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1);

(B) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

(C) dealing in a schedule IV controlled substance (IC 35-48-4-3); or

(D) dealing in a schedule V controlled substance; or

- (4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

SECTION 13. IC 35-47-4-5, AS AMENDED BY P.L.222-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) As used in this section, "serious violent felon" means a person who has been convicted of:

- (1) committing a serious violent felony in:

(A) Indiana; or

(B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony; or

- (2) attempting to commit or conspiring to commit a serious violent felony in:

(A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or

(B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of attempting to commit or conspiring to commit a serious violent felony.

- (b) As used in this section, "serious violent felony" means:



- 1 (1) murder (IC 35-42-1-1);
- 2 (2) voluntary manslaughter (IC 35-42-1-3);
- 3 (3) reckless homicide not committed by means of a vehicle
- 4 (IC 35-42-1-5);
- 5 (4) battery as a:
 - 6 (A) Class A felony (IC 35-42-2-1(a)(5));
 - 7 (B) Class B felony (IC 35-42-2-1(a)(4)); or
 - 8 (C) Class C felony (IC 35-42-2-1(a)(3));
- 9 (5) aggravated battery (IC 35-42-2-1.5);
- 10 (6) kidnapping (IC 35-42-3-2);
- 11 (7) criminal confinement (IC 35-42-3-3);
- 12 (8) rape (IC 35-42-4-1);
- 13 (9) criminal deviate conduct (IC 35-42-4-2);
- 14 (10) child molesting (IC 35-42-4-3);
- 15 (11) sexual battery as a Class C felony (IC 35-42-4-8);
- 16 (12) **sexual misconduct with a minor (IC 35-42-4-9);**
- 17 **(13) robbery (IC 35-42-5-1);**
- 18 ~~(13)~~ **(14)** carjacking (IC 35-42-5-2);
- 19 ~~(14)~~ **(15)** arson as a Class A felony or Class B felony
- 20 (IC 35-43-1-1(a));
- 21 ~~(15)~~ **(16)** burglary as a Class A felony or Class B felony
- 22 (IC 35-43-2-1);
- 23 ~~(16)~~ **(17)** assisting a criminal as a Class C felony (IC 35-44-3-2);
- 24 ~~(17)~~ **(18)** resisting law enforcement as a Class B felony or Class
- 25 C felony (IC 35-44-3-3);
- 26 ~~(18)~~ **(19)** escape as a Class B felony or Class C felony
- 27 (IC 35-44-3-5);
- 28 ~~(19)~~ **(20)** trafficking with an inmate as a Class C felony
- 29 (IC 35-44-3-9);
- 30 ~~(20)~~ **(21)** criminal gang intimidation (IC 35-45-9-4);
- 31 ~~(21)~~ **(22)** stalking as a Class B felony or Class C felony
- 32 (IC 35-45-10-5);
- 33 ~~(22)~~ **(23)** incest (IC 35-46-1-3);
- 34 ~~(23)~~ **(24)** dealing in or manufacturing cocaine, a narcotic drug, or
- 35 methamphetamine (IC 35-48-4-1);
- 36 ~~(24)~~ **(25)** dealing in a schedule I, II, or III controlled substance
- 37 (IC 35-48-4-2);
- 38 ~~(25)~~ **(26)** dealing in a schedule IV controlled substance
- 39 (IC 35-48-4-3); or
- 40 ~~(26)~~ **(27)** dealing in a schedule V controlled substance
- 41 (IC 35-48-4-4).
- 42 (c) A serious violent felon who knowingly or intentionally possesses

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1 a firearm commits unlawful possession of a firearm by a serious violent
2 felon, a Class B felony.

3 SECTION 14. IC 35-50-1-2, AS AMENDED BY P.L.228-2001,
4 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2003]: Sec. 2. (a) As used in this section, "crime of violence"
6 means:

- 7 (1) murder (IC 35-42-1-1);
- 8 (2) attempted murder (IC 35-41-5-1);
- 9 (3) voluntary manslaughter (IC 35-42-1-3);
- 10 (4) involuntary manslaughter (IC 35-42-1-4);
- 11 (5) reckless homicide (IC 35-42-1-5);
- 12 (6) aggravated battery (IC 35-42-2-1.5);
- 13 (7) kidnapping (IC 35-42-3-2);
- 14 (8) rape (IC 35-42-4-1);
- 15 (9) criminal deviate conduct (IC 35-42-4-2);
- 16 (10) child molesting (IC 35-42-4-3);
- 17 (11) sexual misconduct with a minor as a Class A felony
- 18 (IC 35-42-4-9);
- 19 (12) robbery as a Class A felony or a Class B felony
- 20 (IC 35-42-5-1);
- 21 (13) burglary as a Class A felony or a Class B felony
- 22 (IC 35-43-2-1); or
- 23 (14) causing death when operating a motor vehicle (IC 9-30-5-5).

24 (b) As used in this section, "episode of criminal conduct" means
25 offenses or a connected series of offenses that are closely related in
26 time, place, and circumstance.

27 (c) Except as provided in subsection (d) or (e), the court shall
28 determine whether terms of imprisonment shall be served concurrently
29 or consecutively. The court may consider the aggravating and
30 mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c)
31 in making a determination under this subsection. The court may order
32 terms of imprisonment to be served consecutively even if the sentences
33 are not imposed at the same time. However, except for crimes of
34 violence, the total of the consecutive terms of imprisonment, exclusive
35 of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to
36 which the defendant is sentenced for felony convictions arising out of
37 an episode of criminal conduct shall not exceed the presumptive
38 sentence for a felony which is one (1) class of felony higher than the
39 most serious of the felonies for which the person has been convicted.

40 (d) If, after being arrested for one (1) crime, a person commits
41 another crime:

- 42 (1) before the date the person is discharged from probation,



1 parole, or a term of imprisonment imposed for the first crime; or

2 (2) while the person is released:

3 (A) upon the person's own recognizance; or

4 (B) on bond;

5 the terms of imprisonment for the crimes shall be served consecutively,
6 regardless of the order in which the crimes are tried and sentences are
7 imposed.

8 (e) If a court determines under IC 35-50-2-11 that a person used a
9 firearm in the commission of the offense for which the person was
10 convicted, the term of imprisonment for the underlying offense and the
11 additional term of imprisonment imposed under IC 35-50-2-11 must be
12 served consecutively.

13 SECTION 15. IC 35-50-2-2, AS AMENDED BY P.L.116-2002,
14 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2003]: Sec. 2. (a) The court may suspend any part of a
16 sentence for a felony, except as provided in this section or in section
17 2.1 of this chapter.

18 (b) With respect to the following crimes listed in this subsection, the
19 court may suspend only that part of the sentence that is in excess of the
20 minimum sentence:

21 (1) The crime committed was a Class A or Class B felony and the
22 person has a prior unrelated felony conviction.

23 (2) The crime committed was a Class C felony and less than seven
24 (7) years have elapsed between the date the person was
25 discharged from probation, imprisonment, or parole, whichever
26 is later, for a prior unrelated felony conviction and the date the
27 person committed the Class C felony for which the person is
28 being sentenced.

29 (3) The crime committed was a Class D felony and less than three
30 (3) years have elapsed between the date the person was
31 discharged from probation, imprisonment, or parole, whichever
32 is later, for a prior unrelated felony conviction and the date the
33 person committed the Class D felony for which the person is
34 being sentenced. However, the court may suspend the minimum
35 sentence for the crime only if the court orders home detention
36 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
37 sentence specified for the crime under this chapter.

38 (4) The felony committed was:

39 (A) murder (IC 35-42-1-1);

40 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
41 causing death;

42 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

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- 1 (D) kidnapping (IC 35-42-3-2);
- 2 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 3 (F) rape (IC 35-42-4-1) as a Class A felony;
- 4 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 5 felony;
- 6 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
- 7 felony;
- 8 (I) **sexual misconduct with a minor (IC 35-42-4-9);**
- 9 (J) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 10 with a deadly weapon;
- 11 ~~(K)~~ (K) arson (IC 35-43-1-1) for hire or resulting in serious
- 12 bodily injury;
- 13 ~~(L)~~ (L) burglary (IC 35-43-2-1) resulting in serious bodily
- 14 injury or with a deadly weapon;
- 15 ~~(M)~~ (M) resisting law enforcement (IC 35-44-3-3) with a
- 16 deadly weapon;
- 17 ~~(N)~~ (N) escape (IC 35-44-3-5) with a deadly weapon;
- 18 ~~(O)~~ (O) rioting (IC 35-45-1-2) with a deadly weapon;
- 19 ~~(P)~~ (P) dealing in cocaine, a narcotic drug, or
- 20 methamphetamine (IC 35-48-4-1) if the court finds the person
- 21 possessed a firearm (as defined in IC 35-47-1-5) at the time of
- 22 the offense, or the person delivered or intended to deliver to a
- 23 person under eighteen (18) years of age at least three (3) years
- 24 junior to the person and was on a school bus or within one
- 25 thousand (1,000) feet of:
- 26 (i) school property;
- 27 (ii) a public park;
- 28 (iii) a family housing complex; or
- 29 (iv) a youth program center;
- 30 ~~(Q)~~ (Q) dealing in a schedule I, II, or III controlled substance
- 31 (IC 35-48-4-2) if the court finds the person possessed a firearm
- 32 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 33 person delivered or intended to deliver to a person under
- 34 eighteen (18) years of age at least three (3) years junior to the
- 35 person and was on a school bus or within one thousand (1,000)
- 36 feet of:
- 37 (i) school property;
- 38 (ii) a public park;
- 39 (iii) a family housing complex; or
- 40 (iv) a youth program center;
- 41 ~~(R)~~ (R) an offense under IC 9-30-5 (operating a vehicle while
- 42 intoxicated) and the person who committed the offense has

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1 accumulated at least two (2) prior unrelated convictions under
 2 IC 9-30-5; or

3 ~~(R)~~ (S) aggravated battery (IC 35-42-2-1.5).

4 (c) Except as provided in subsection (e), whenever the court
 5 suspends a sentence for a felony, it shall place the person on probation
 6 under IC 35-38-2 for a fixed period to end not later than the date that
 7 the maximum sentence that may be imposed for the felony will expire.

8 (d) The minimum sentence for a person convicted of voluntary
 9 manslaughter may not be suspended unless the court finds at the
 10 sentencing hearing that the crime was not committed by means of a
 11 deadly weapon.

12 (e) Whenever the court suspends that part of an offender's (as
 13 defined in IC 5-2-12-4) sentence that is suspendible under subsection
 14 (b), the court shall place the offender on probation under IC 35-38-2 for
 15 not more than ten (10) years.

16 (f) An additional term of imprisonment imposed under
 17 IC 35-50-2-11 may not be suspended.

18 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 19 IC 35-47-10-7 may not be suspended if the commission of the offense
 20 was knowing or intentional.

21 (h) A term of imprisonment imposed for an offense under
 22 IC 35-48-4-6(b)(1)(B) may not be suspended.

23 SECTION 16. IC 35-50-2-9, AS AMENDED BY P.L.117-2002,
 24 SECTION 2, IS CORRECTED AND AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The state may
 26 seek either a death sentence or a sentence of life imprisonment without
 27 parole for murder by alleging, on a page separate from the rest of the
 28 charging instrument, the existence of at least one (1) of the aggravating
 29 circumstances listed in subsection (b). In the sentencing hearing after
 30 a person is convicted of murder, the state must prove beyond a
 31 reasonable doubt the existence of at least one (1) of the aggravating
 32 circumstances alleged. However, the state may not proceed against a
 33 defendant under this section if a court determines at a pretrial hearing
 34 under IC 35-36-9 that the defendant is a mentally retarded individual.

35 (b) The aggravating circumstances are as follows:

36 (1) The defendant committed the murder by intentionally killing
 37 the victim while committing or attempting to commit any of the
 38 following:

39 (A) Arson (IC 35-43-1-1).

40 (B) Burglary (IC 35-43-2-1).

41 (C) Child molesting (IC 35-42-4-3).

42 (D) Criminal deviate conduct (IC 35-42-4-2).

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- 1 (E) **Sexual misconduct with a minor (IC 35-42-4-9).**
- 2 (F) Kidnapping (IC 35-42-3-2).
- 3 ~~(F)~~ (G) Rape (IC 35-42-4-1).
- 4 ~~(G)~~ (H) Robbery (IC 35-42-5-1).
- 5 ~~(H)~~ (I) Carjacking (IC 35-42-5-2).
- 6 ~~(I)~~ (J) Criminal gang activity (IC 35-45-9-3).
- 7 ~~(J)~~ (K) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 8 (2) The defendant committed the murder by the unlawful
- 9 detonation of an explosive with intent to injure person or damage
- 10 property.
- 11 (3) The defendant committed the murder by lying in wait.
- 12 (4) The defendant who committed the murder was hired to kill.
- 13 (5) The defendant committed the murder by hiring another person
- 14 to kill.
- 15 (6) The victim of the murder was a corrections employee,
- 16 probation officer, parole officer, community corrections worker,
- 17 home detention officer, fireman, judge, or law enforcement
- 18 officer, and either:
- 19 (A) the victim was acting in the course of duty; or
- 20 (B) the murder was motivated by an act the victim performed
- 21 while acting in the course of duty.
- 22 (7) The defendant has been convicted of another murder.
- 23 (8) The defendant has committed another murder, at any time,
- 24 regardless of whether the defendant has been convicted of that
- 25 other murder.
- 26 (9) The defendant was:
- 27 (A) under the custody of the department of correction;
- 28 (B) under the custody of a county sheriff;
- 29 (C) on probation after receiving a sentence for the commission
- 30 of a felony; or
- 31 (D) on parole;
- 32 at the time the murder was committed.
- 33 (10) The defendant dismembered the victim.
- 34 (11) The defendant burned, mutilated, or tortured the victim while
- 35 the victim was alive.
- 36 (12) The victim of the murder was less than twelve (12) years of
- 37 age.
- 38 (13) The victim was a victim of any of the following offenses for
- 39 which the defendant was convicted:
- 40 (A) Battery as a Class D felony or as a Class C felony under
- 41 IC 35-42-2-1.
- 42 (B) Kidnapping (IC 35-42-3-2).

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(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time

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credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (k) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (k).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider

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the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

(1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and

(2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

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